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13 Attorneys for Defendant ARISTA NETWORKS, INC.

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 CISCO SYSTEMS, INC.,
18

19 Plaintiff,

20 v.

21 ARISTA NETWORKS, INC.,

22 Defendant.
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Case No. 5:14-cv-05344-BLF (NC)

**DECLARATION OF ELIZABETH K.
MCCLOSKEY IN SUPPORT PLAINTIFF
CISCO SYSTEMS, INC.'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL CONFIDENTIAL
INFORMATION IN CISCO'S
OPPOSITION TO ARISTA'S MOTION TO
STRIKE EXPERT OPINIONS AND
TESTIMONY OF DR. JUDITH A.
CHEVALIER (ECF 476)**

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

1 I, ELIZABETH K. MCCLOSKEY, declare:

2 1. I am an attorney licensed to practice law in the State of California and admitted to
3 practice before this Court. I am an associate at the law firm of Keker & Van Nest LLP and
4 counsel for Defendant Arista Networks, Inc. in the above-captioned action. I have personal
5 knowledge of the facts stated herein and, if called as a witness, I could testify competently
6 thereto.

7 2. I submit this declaration in support of the Administrative Motion to File Under
8 Seal Confidential Information in Cisco's Opposition to Arista's Motion to Strike Expert Opinions
9 and Testimony of Dr. Judith A. Chevalier ("Motion to Seal"), filed by Plaintiff Cisco Systems,
10 Inc. ("Cisco") on August 19, 2016 (D.I. 476). I have reviewed Cisco's Motion to Seal and the
11 Civil Local Rules of this Court governing such motions, and submit this supporting declaration
12 under Civil L.R. 79-5(e).

13 3. Arista seeks to file under seal certain portions of Cisco's Opposition to Arista's
14 Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier. Because Cisco's
15 Motion to Seal relate to non-dispositive motion, the documents and information that the parties
16 request to file under seal are not subject to a strong presumption of public access. *See Kamakana*
17 *v. City & County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). Rather, the "good cause"
18 standard of Rule 26(c) of the Federal Rules of Civil Procedure applies to the material that Cisco's
19 Motion to Seal seeks to withhold from public view. *Id.* at 1179. Civil Local Rule 79-5 further
20 requires that a party seeking to seal information and documents "establish[] that the document, or
21 portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection
22 under the law." Civil L.R. 79-5(b). The sealing request must also "be narrowly tailored to seek
23 sealing only of sealable material." *Id.* I submit this declaration to provide additional facts in
24 support of Cisco's Motion to Seal, and to provide facts establishing that the "good cause"
25 standard has been met for materials that Arista seeks to file under seal.

26 4. For purposes of a motion to seal, I understand that good cause—indeed,
27 compelling reasons—may exist to file materials under seal when, for example, court filings could
28 be used for improper purposes, such as "to gratify private spite, promote public scandal, circulate

libelous statements, or release trade secrets.” *Kamakana*, 447 F.3d at 1178–79 (citation omitted). I further understand that good cause and compelling reasons may exist where court filings contain or discuss confidential source code, *see Apple, Inc. v. Samsung Electronics Co., Ltd.*, No. 11-cv-1846, D.I. 2190 at *3 (Dec. 10, 2012); internal and non-public procedures of financial institutions, *see Cowan v. GE Capital Retail Bank*, No. 13-cv-03935-BLF, 2015 WL 1324848, at *1-3 (N.D. Cal. Mar. 24, 2015); information about an entity’s confidential “business performance, structure, and finances that could be used to gain unfair business advantage against them,” *Schwartz v. Cook*, No. 15-cv- 03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016); “highly sensitive information regarding [an entity’s confidential] product architecture and development,” *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014); emails containing confidential information about an entity’s “business practices, recruitment efforts, and discussions regarding potential partnerships with other product manufacturers,” *see Koninklijke Philips N.V. v. Elec-Tech International Co., Ltd.*, No. 14-cv-02737-BLF, 2015 WL 581574, at *1–2 (N.D. Cal. Dec. 10, 2015); and “information regarding non-public recruitment efforts and business practices” of a party. *See id.* at *2-3.

5. Cisco submitted a declaration in support of its Motion to Seal (D.I. 476-1) that identified and attached highlighted copies of material that should be sealed. To the extent that those exhibits implicate Arista materials, I address those exhibits below. Per the instructions provided on the Northern District of California’s website, this declaration is drafted so that it does not contain or reveal confidential information, and therefore does not need to be filed under seal. *See* <http://www.cand.uscourts.gov/ecf/underseal>.

6. Cisco’s Opposition to Arista’s Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier (D.I. 476-4): Cisco’s Opposition contains Arista confidential information within the highlighted text at:

- i) Page 1, lines 24-26
- ii) Page 8, lines 9-13
- iii) Page 8, footnote 3
- iv) Page 9, lines 6-26

v) Page 10, lines 3-24

There is good cause to seal those portions of Cisco's Opposition because they discuss and reveal internal, non-public, and sensitive information regarding Arista's product development and design process, competitive intelligence, marketing, and sales strategies, including specific information pertaining to particular Arista customers and their non-public product requirements. *See In re Elec. Arts, Inc.*, 298 F. App'x 568, 569–70 (9th Cir. 2008); *Delphix*, 2014 WL 4145520, at *2; *Koninklijke Philips*, 2015 WL 581574, at *1–2; *see also Schwartz*, 2016 WL 1301186, at *2 (discussing the harm that could result by the dissemination of similar sensitive internal business information to competitors, who would find it valuable).

7. Exhibit 1 to the Declaration of Sara E. Jenkins in Support of Cisco's Opposition to Arista's Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier ("Jenkins Declaration") (D.I. 478-1): Exhibit 1 to the Jenkins Declaration, which is an excerpt from the deposition of Arista Senior Vice President of Customer Engineering Anshul Sadana, contains Arista confidential information. There is good cause to seal Exhibit 1 because it discusses and reveals internal, non-public, and sensitive information regarding Arista's product development and design process, competitive intelligence, marketing, and sales strategies, including specific information pertaining to particular Arista customers and their non-public product requirements. *See In re Elec. Arts, Inc.*, 298 F. App'x at 569–70; *Delphix*, 2014 WL 4145520, at *2; *Koninklijke Philips*, 2015 WL 581574, at *1–2; *see also Schwartz*, 2016 WL 1301186, at *2.

Executed August 23, 2016, at San Francisco, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



ELIZABETH K. MCCLOSKEY